

REMARKS/ARGUMENTS

After entry of this response, claims 1-9 are under examination.

In the restriction requirement of the Office action mailed March 7, 2007, the Examiner required the Applicants to elect a single species from the previously elected Group II (claims 1-9) if no generic claim is found allowable. Applicants respectfully disagree.

Nevertheless, as required by the Examiner, Applicants hereby provisionally elect, with traverse, the species as describe in the Introductory Comments above. Claims 1 to 9 are readable on this species. Applicants respectfully traverse and urge reconsideration and withdrawal of the restriction requirement on selecting species for following reasons.

Unity Of Invention Must Be Considered First Only In Relation To Independent Claims

Because this application is a 35 U.S.C. § 371 national stage filing, PCT International Search and Preliminary Examination Guidelines, PCT Rules 13.1, and 13.2 are the applicable standard for determining unity of invention during the national stage of an international application. See also MPEP § 1850. According to Chapter 10 §10.06 of the Guidelines, unity of invention must be “considered in the first place only in relation to the independent claims” and not the dependent claims. Furthermore, Chapter 10 §10.07 of the Guidelines states that “[i]f the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect to any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.”

The Examiner specifically requested the election of a single species in claims 1 and 7. Claim 7, however, depends from claim 1. Thus, based on the PCT Guidelines, the restriction requirement is not proper. Applicants respectfully require the withdrawal of the restriction.

The Species Are Properly Claimed Under PCT Markush Practice

According to the Guidelines §10.17, a Markush grouping is proper if the alternatives therein are of a similar nature. The alternatives are of a similar nature when:

- (A) all alternatives have a common property or activity, and
- (B)(1) a common structure is present, that is, a significant structural element is shared by all of the alternatives, or
- (B)(2) in cases where the common structure cannot be the unifying criteria, all alternatives belong to a recognized class of chemical compounds in the art to which the invention pertains.

In the present case, all the species have the same property as lipids and share the common structure as depicted in formula I in claim 1. In addition, all species belong to polyunsaturated fatty acids, a recognized class of compounds in the art to which the invention pertains. All requirements for proper Markush practice outlined in the Guidelines are satisfied.

The restriction requirement for electing a single species is not proper. Applicants respectfully require the withdrawal of the restriction.

All Species Can Be Searched And Examined Without Undue Burden

Applicants believe that there is no undue burden on the Examiner to search and examine all species. As noted above, this is a national stage application from a PCT application, and all Groups (and species) were searched by the International Search Authority and the International Examination Authority. Applicants respectfully submit that the restriction requirement should be withdrawn. As stated in § 803 of the MPEP, “[i]f the search and examination of the entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Since the search has already been conducted by the International Search Authority and the International Examination

Authority and no lack of unity of invention has been found, there would be no undue burden on the Examiner to examine all species in one application.

Thus, the restriction requirement is not proper. Applicants respectfully require the withdrawal of the restriction.

Conclusion

For the above reasons, Applicants respectfully request that the restriction requirement be reconsidered and withdrawn. As requested by the Examiner, Applicants hereby elect the species described above in the Introductory Comments for examination.

Applicants reserve all rights to pursue the non-elected species in this application and/or in one or more divisional or continuation applications, if necessary.

Accompanying this response is a petition for a one-month extension of time to respond to the Office Action mailed March 7, 2007 with the required fee authorization. No further fee is believed due. However, if any additional fee is due, the Director is hereby authorized to charge our Deposit Account No. 03-2775, under Order No. 13478-00001-US from which the undersigned is authorized to draw.

Respectfully submitted,

/Zhun Lu/

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